



# Court of Federal Claims Bar Association Newsletter

Fall 2005 Edition

## *Message from the Chief Judge*

### **A New Season Begins**



The close of summer is quite a transition period at the court. At various dates ranging from early August into September, the judges of the court bid farewell to departing law clerks and

service. I am continually impressed at the extraordinary credentials and life experiences of these individuals. They are a credit not only to their individual judges but also to the court institutionally.

Despite the time-consuming and initially daunting chore of familiarizing themselves with the court's rules, electronic case filing and other operating procedures, and various chambers processes, the law clerks jump in immediately on case matters. I trust, and am confident that, this transition within the judges' chambers is seamless in the eyes of

welcomed their replacements. On September 14, the Bar Association generously co-hosted the court's annual breakfast for law clerks. President-elect Nancie Marzulla graciously added her words of welcome and a brief description of the work of the Association.

Bar Association board member Melonie McCall also joined us for the occasion.

The law clerks, as all the judges of the court are pleased to acknowledge, are an integral part of the court's family and play a valuable role in the efficient administration of justice. It is traditional at the welcome breakfast for the judges to introduce their clerks, both those newly arrived and those continuing on in

parties and their counsel.

In August, as has been my habit for the past three years, I surveyed the judges to seek their preferences for service on the various judges' committees that I appoint to assist me in the administration of the court. In addition to the time necessarily devoted to casework, the judges are called upon to contribute scarce resources of time to the management of the

**Court of Federal Claims  
Judicial Conference  
November 3-4, 2005  
Hyatt Regency Penn's Landing  
Philadelphia, PA.  
To Register Visit  
<http://www.uscfc.uscourts.gov/>.  
Additional Information Inside  
this Newsletter.**

court as a whole. The members of the judges' committees for 2005-06 are:

- Management: Damich (Chair), Baskir, Firestone, Hewitt, Hodges, Smith, Williams, and Wolski
- Rules: Lettow (Chair), Block, Hewitt, Merow, and Wiese
- Technology: Allegra (Chair), Block, Braden, Horn, and G. Miller
- Security: Futey (Chair), Bush, Hodges, C. Miller, and Yock
- ADR: Horn (Chair), Baskir, Firestone, and Hodges
- Court History: Bruggink (Chair), Lydon, Margolis, Smith, and Yock
- Bid Protest Liaison: Williams
- Pro Bono Liaison: Baskir

I am most appreciative of the judges for their unstinting willingness to assist the court in these efforts.

The fiscal year has only just come to a close, but a preliminary review of case statistics for FY 2005 indicates a total of 1,644 new cases filed in the fiscal year (compared to 2,350 for FY 2004). Of this total, 913 were non-vaccine cases (compared to 1,136 in FY 04 and 560 in FY 03); and bid protests in FY05 totaled 60 (compared to 67 in FY 04). These numbers reflect the normal ebb and flow of case filings that has characterized the court's docket over the last several years.

On another case filing matter of note, as of November 1, 2005, all new non-pro se cases, except for bid protest and vaccine cases, will automatically be designated for electronic case filing (ECF) only. Bid Protest cases may be deemed ECF with the approval of the assigned judge.

Another feature of the fall season is the court's annual Judicial Conference, to be held this year at the Hyatt Regency - Penn's Landing in Philadelphia on November 3 and 4. Details on panel topics and speakers and registration information may be found otherwise in this newsletter or on the court's web site ([www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov)), although I am particularly delighted to note that former Pennsylvania Governor Dick Thornburgh will address the luncheon on November 4. The judges of the court join me in heartily encouraging your attendance and we look forward both to the substantive discussions and to meeting court practitioners informally.

As many court observers are aware, late last spring the court advertised for applications to fill two vacancies among the court's roster of Special Masters in the court's vaccine injury compensation program. There were quite a number of superbly qualified candidates who applied and, although the process of consideration of the applications is continuing, the court is hopeful that the selections may be finalized by late autumn.

As a concluding note of good news among the court family, the court recently celebrated the championship victory of its softball team in the judiciary softball league. The CFC team bested our neighbors and friends of the Court of Appeals for the Federal Circuit for the league championship on September 20. Special thanks go to team coordinators Joan Goldfrank and Victoria Smith of Judge Wiese's chambers and to Judge Susan Braden for her unflagging attendance at all of the team games.

**This is *Your* Bar Association!**  
**Become Active in the Court of Federal Claims Bar Association!**  
**Encourage Your Friends and Colleagues to Become Active!**  
**Speak at or Help to Organize a Brown-Bag Program!**  
**To Volunteer Your Services, email either**  
**Bar Association President Steve Frahm at [Steven.I.Frahm@USDOL.gov](mailto:Steven.I.Frahm@USDOL.gov)**  
**or President-Elect Nancie Marzulla at [Nancie@Marzulla.com](mailto:Nancie@Marzulla.com).**

# ***Former Governor and U.S. Attorney General Dick Thornburgh to be Special Guest Speaker At Judicial Conference***

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## ***Author Kermit Roosevelt Also to Speak***



The Special Guest Luncheon Speaker at the Judicial Conference on Friday, November 4 will be The Honorable Dick Thornburgh.

Dick Thornburgh served as Governor of Pennsylvania, Attorney General of the United States under two presidents and the highest-ranking American at the United Nations during a public career which spanned over 25 years. He is currently counsel to the international law firm of Kirkpatrick & Lockhart Nicholson Graham LLP, resident in its Washington, D.C. office.

Elected Governor of Pennsylvania in 1978 and re-elected in 1982, Thornburgh was the first Republican ever to serve two successive terms in that office. He served as Chair of the Republican Governors Association and was named by his fellow governors as one of the nation's most effective big-state governors in a 1986 Newsweek poll.

During his service as Governor, Thornburgh balanced state budgets for eight consecutive years, reduced both personal and business tax rates, cut the state's record-high indebtedness and left a surplus of \$350 million. Under his leadership, 15,000 unnecessary positions were eliminated from a swollen state bureaucracy and widely recognized economic development, education and welfare reform programs were implemented. Pennsylvania's unemployment rate, among the ten highest in the nation when he was elected, was among the ten lowest when he left office.

After his unanimous confirmation by the United States Senate, Thornburgh served three years as Attorney General of the United States (1988-1991) in the cabinets of Presidents Reagan and Bush. He mounted an unprecedented attack on white-collar crime as the Department of Justice obtained a record number of convictions of savings and loan and securities officials, defense contractors and corrupt public officials. Thornburgh established strong ties with law enforcement agencies around the world to help combat drug trafficking, money laundering, terrorism and international white-collar crime. The Legal Times noted that Thornburgh as Attorney General "built a reputation as one of the most effective champions that prosecutors have ever had." He currently chairs a panel of the National Academy of Public Administration examining the transformation of the Federal Bureau of Investigation.

As Attorney General, Thornburgh played a leading role in the enactment of the Americans with Disabilities Act. He also took vigorous action against racial, religious and ethnic "hate crimes," and his office mounted a renewed effort to enforce the nation's anti-trust and environmental laws. In 2002, he received the Wiley E. Branton Award of The Washington Lawyers' Committee for Civil Rights and Urban Affairs in recognition of his "commitment to the civil rights of people with disabilities."

All told, Thornburgh served in the Justice Department under five Presidents, beginning as United States Attorney in Pittsburgh (1969-1975) and Assistant Attorney General in charge of the Criminal Division (1975-1977), emphasizing efforts against major drug traffickers, organized crime and corrupt public officials. During his tenure as Attorney General, Thornburgh twice personally argued and won cases before the United States Supreme Court.

During his service as Under-Secretary-General at the United Nations (1992-1993), Thornburgh was in charge of personnel, budget and finance matters. His report to the Secretary-General on reform, restructuring and streamlining

efforts designed to make the United Nations peacekeeping, humanitarian and development programs more efficient and cost-effective was widely praised. He also has served as a consultant to the United Nations and the World Bank on efforts to battle fraud and corruption.

Throughout his career, he has traveled widely, visiting over 40 countries and meeting with leaders from Canada, Mexico, Europe, Africa, the Middle East, Russia, Ukraine, Japan, China, Taiwan, Korea, Cambodia, Australia and Central and South America. He served as an observer to Russia's legislative (1993) and presidential (1996) elections, is Chairman of the U.S. Committee for Hong Kong and is a member of the board of advisors of the Russian-American Institute for Law and Economics.

A native of Pittsburgh, Thornburgh was educated at Yale University, where he obtained an engineering degree, and at the University of Pittsburgh School of Law where he served as an editor of the Law Review. He has been awarded honorary degrees by 31 other colleges and universities. Thornburgh served as Director of the Institute of Politics at Harvard's John F. Kennedy School of Government (1987-1988) and was a visiting lecturer at the George Washington University Law School (1995). He has lectured on over 125 other campuses, including Moscow State University, debated at the Oxford Union and frequently appears as a guest commentator on network news and talk shows.

Dick Thornburgh's autobiography, *Where the Evidence Leads*, was published by the [University of Pittsburgh Press](#) in September 2003.



## The Guest Speaker at the Judicial Conference Dinner on Thursday, November 3 will be Author and University of Pennsylvania Law Professor Kermit Roosevelt.

Kermit Roosevelt, Assistant Professor of Law, works in a diverse range of fields, focusing on constitutional and law and conflict of laws.

He has published in the *Virginia Law Review*, the *Michigan Law Review*, and the *Yale Journal on Regulation*, among others, and recently co-authored a chapter on Internet filtering systems in *Protecting Our Children on the Internet: Towards a New Culture of Responsibility*. In connection with that work, he presented testimony on the future of filtering to the Congressional Commission on the Child Online Protection Act. Recently, Roosevelt presented "The Supreme Court in American Society" at the National Constitution Center. He has twice received certificates of distinction from Harvard's Derek Bok Center for Teaching.

Professor Roosevelt is the author of the best-selling novel *IN THE SHADOW OF THE LAW*, (New York : Farrar, Straus and Giroux, 2005).

Penn Law - Assistant Professor (2002 -)

Associate - Mayer, Brown & Platt, Chicago (2000-02)

Law Clerk - U.S. Supreme Court Associate Justice David H. Souter (1999-2000)

Law Clerk - Judge Stephen F. Williams, Washington (1997-98)

Harvard Kennedy School Of Government - Member, Human Rights Advisory Board (1998 -)

Yale Law - Fellow, Information Society Project (1998 -)



**Special Fares on Train Travel to Philadelphia for Judicial Conference  
Now through March 31, 2006, when you purchase two tickets on trains in  
the Northeast, the rest of your party - up to four additional people - will  
travel for 90% off the regular fare.**

**Use Discount Code H545 when making your reservation with Amtrak.**



UNITED STATES COURT  
OF FEDERAL CLAIMS

# 18<sup>th</sup> Judicial CONFERENCE

NOVEMBER 3 & 4, 2005  
Hyatt Regency - Penn's Landing  
Philadelphia, Pennsylvania

## DAMAGES AGAINST THE SOVEREIGN: THEORY AND PRACTICE

THURSDAY, NOVEMBER 3, 2005

3:30 p.m. to 4:00 p.m.    **REGISTRATION**

4:15 p.m. to 5:30 p.m.    **ASK THE JUDGES**

Moderator: Steven Frahm, President, CFC Bar Association  
Panelists: The Honorable Edward J. Damich  
The Honorable Marian Blank Horn  
The Honorable Charles F. Lettow  
The Honorable Loren A. Smith  
The Honorable Mary Ellen Coster Williams  
The Honorable Victor J. Wolski

6:30 p.m.    **RECEPTION AND DINNER**

The National Constitution Center  
525 Arch Street, Philadelphia, PA  
(Bus Transportation Provided)

**Guest Speaker:** Kermit Roosevelt,  
Professor, University of Pennsylvania Law  
School; Author, *In the Shadow of the Law*



## FRIDAY, NOVEMBER 4, 2005

- 8:00 a.m. to 8:30 a.m. **REGISTRATION & CONTINENTAL BREAKFAST**
- 8:30 a.m. to 8:45 a.m. **WELCOME & STATE OF THE COURT**  
The Honorable Edward J. Damich  
Chief Judge, U.S. Court of Federal Claims
- 8:45 a.m. to 10:15 a.m. **GENERAL SESSION—Theories of Recovery:**  
**Restitution under the new American Law Institute approach.**  
Professor Kull  
**Damages from an Economist's Perspective.**  
Professor Goldberg, Mr. Carron
- Moderator: The Honorable Nancy B. Firestone, U.S. Court of Federal Claims  
Panelists: Professor Andrew Kull, Boston University School of Law  
Victor Goldberg, Co-Director, Center for Law & Economic Studies,  
Columbia University School of Law  
Andrew S. Carron, Senior Vice President, National Economic Associates, Inc.
- 10:15 a.m. to 10:30 a.m. **BREAK**
- 10:30 a.m. to 11:45 a.m. **GENERAL SESSION—Practicum on Damages:**  
**Discussion of Issues Affecting the Assessment and**  
**Calculation of Damages from the Expert's Perspective.**
- Moderator: The Honorable Francis M. Allegra, U.S. Court of Federal Claims  
Panelists: David Lasater, FTI Consulting, Inc.  
Bradley J. Preber, Grant Thornton LLP  
William Wade, Energy and Water Economics
- 12:00 p.m. to 1:15 p.m. **LUNCH—Special Guest Speaker: The Honorable Dick Thornburgh**
- 1:15 p.m. to 1:45 p.m. **GENERAL SESSION—Iraq: A Lawyer's Perspective.**  
**The role of civilian public servants and,**  
**particularly, the contributions of American lawyers to the**  
**reconstruction of the emerging state of Iraq.**
- Moderator: John Euler, Past President, CFC Bar Association;  
Office of General Counsel to Coalition Provisional Authority in Iraq  
Panelists: Myriah Jordan, Deputy General Counsel, Office of Special  
Inspector General for Iraq Reconstruction  
Corin Stone, Deputy General Counsel, Office of the  
Director, National Intelligence  
John Vardman, Special Assistant to General Counsel,  
Department of the Treasury
- 1:45 p.m. to 2:00 p.m. **BREAK**
- 2:00 p.m. to 3:15 p.m. **BREAKOUT SESSIONS**  
**"BIG CASES": How Large Cases Are (or Are Not)**  
**Affecting Practice and Procedure before the Court.**

Issues include: do “big” cases require or justify departure from normal rules of document production, the taking of depositions, or other discovery procedures; what are the limitations on “lead case” procedures; and should special trial procedures be implemented?

Moderator: The Honorable Christine O.C. Miller, U.S. Court of Federal Claims  
Panelists: Brad Fagg, Morgan Lewis & Bockius  
Harold D. Lester, Department of Justice  
William Ryan, Department of Justice  
Edward Sisson, Arnold & Porter

#### **PROPERTY VALUATION:**

##### **Discussion of Common Valuation Issues.**

Topics include: Use of different valuation approaches; determination of highest and best use; evaluating unusual property interests including temporary interests; and other valuation issues arising in litigation.

Moderator: The Honorable Emily C. Hewitt, U.S. Court of Federal Claims  
Panelists: William C. Harvey, Harvey & Associates, Inc.  
Steven Herzog, President, The Herzog Group, Inc.  
Christopher Lattanzi, President, Micon International, Ltd.  
Gary Trugman, President, Trugman Valuation Associates

#### **PICKING THE RIGHT EXPERT:**

##### **Practical Issues in Selecting and Working with Experts.**

Topics include: criteria for selection; ethical considerations; dealing with first-time testifying experts; what to do when problems arise.

Moderator: The Honorable Eric G. Bruggink, U.S. Court of Federal Claims  
Panelists: The Honorable John Wiley, Los Angeles Superior Court  
Jeanne Davidson, Department of Justice  
David Gustafson, Department of Justice  
Dan Marino, Sutherland Asbill & Brennan LLP  
Nancie Marzulla, Marzulla & Marzulla

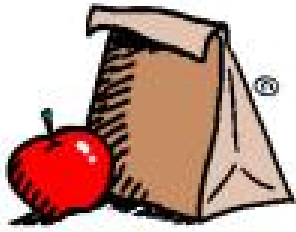
#### **VACCINE DAMAGES:**

##### **Creative Approaches for Determining Reasonable Compensation.**

Moderator: Jerry P. Roscoe, Owner/Neutral, JAMS, Inc.  
Panelists: Lawrence H. Curtis, General Counsel, Mass Tort Settlements Services  
Roberta Hurley, Life Care Planner, Hurley & Econs Consulting  
Suzanne Labansky, Life Care Planner

**3:15 p.m. to 3:30 p.m. BREAK**

**3:30 p.m. to 4:30 p.m. GENERAL SESSION—ETHICS: Civil Litigation Against the Government and the Model Rules of Professional Conduct.**  
Professor Cathy Lanctot, Villanova University School of Law



The Court of Federal Claims Bar Association Brown Bag Series  
Proudly Presents  
**"The History of The United States Court of Federal Claims"**  
A Brown Bag Seminar celebrating the 150 Year History  
of the United States Court of Federal Claims  
October 19, 2005 - 12:00 p.m.

A video presentation will be shown and Mr. Clarence Kipps, Co-Chairman of the Court's Advisory Committee, will provide vignettes of Court history. The brown bag seminar will take place on the lower level of the Tayloe House, U.S. Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. Please RSVP to Deborah Bynum at [deborah.bynum@usdoj.gov](mailto:deborah.bynum@usdoj.gov) or (202) 616-0468. Please feel free to bring a bag lunch or lunch can be purchased at the Tayloe House Cafe.

## ***CM/ECF Update***

**Effective November 1, 2005, all new non-Pro Se cases except for Bid Protest (natures of suit 138 and 140) and Vaccine Injury Compensation (natures of suit 400 - 493) will automatically be designated as electronic (ECF) cases when filed.**

**Bid Protest cases may still be deemed ECF by order of the assigned Judge.**

**All procedures for new cases are still in effect - cases must still be filed in paper form with the Clerk's Office and a paper notification of the ECF designation will still be sent out to all parties.**



**National Constitution Center, Site of Judicial Conference Dinner**